

## **REMARKS**

This application has been carefully reviewed in light of the Office Action and the references of record as used in the present rejection. Applicant respectfully requests reconsideration as follows:

### **Regarding Applicant's Claimed Invention**

The present specification, as evidenced in part by the restriction, claims multiple inventions with multiple embodiments. However, it is instructive to review one problem being addressed. When viewing a television channel using a receiver device PVR (also called a DVR), the user can implement so-called “trick play” modes such as replaying a segment in a manner as though the content being viewed were not live content, but were instead being viewed from a DVD or video tape. This is made possible by in fact storing and buffering the content on a disc drive so that earlier recorded content can be accessed. By the nature of the continual recording of content, that act of changing channels (e.g., from a CBS to an ABC affiliate station) takes longer than the user of a conventional analog television is accustomed to. The user can therefore find the delay in channel change to be an annoyance. Certain embodiments consistent with the present invention are intended to address this delay in channel change.

### **Regarding All Rejections**

The present Final Office Action has been carefully reviewed, and the undersigned wishes to address some fundamental differences that are not contemplated in the cited art and are not fully addressed by either of the Office Actions. Additionally, although the claims without amendment distinguish over the cited art, several minor claim amendments are made hereby to enhance the clarity of the claims and highlight the distinctions being argued.

The above problem is not addressed in the art cited in this or the earlier Office Action. The Dumont reference merely provides a switch (Mux) that can select from among multiple program sources. Hence, there is no change of the switch when the user changes a channel provided by one of the program sources. The switch only changes program sources.

The Examiner indicates that she is unpersuaded by Applicant's arguments that the cited art fail to disclose all of the claim features, however, the Final Office Action still fails to properly demonstrate where certain features of the claims can be found in the cited art. By way of specific example, it was previously argued and continues to be argued that the cited Dumont reference fails to teach suggest or hint that the switch operation depends in any way, shape or form upon a user command for implementing a channel change. Anyone who has operated a television knows what is involved in changing channels, but Dumont fails to address this issue. As noted above, Dumont merely changes program sources, and does not do so in response to a channel change command. Moreover, Dumont fails to address this issue in a PVR environment as claimed.

The Office position is that "*if the user desires to watch the video signal from the analog source, from the digital source, or from the medium interface, she/he is able to choose one of the sources (see paragraph 0043 and 0044). Hence out of the three paths only one path is selected at a time to playback video signal, and the user is able to change or switch from one source to another. Therefore the path is changed according to the selection.*" (paragraph spanning pages 2 and 3) However, the Examiner is referred to the claim language which calls for (using claim 1 as an example) "*the control means receives user commands and responsive to a user command to change a channel, commands the switching means to route the live video signal to the output means*". The undersigned remains unable to find any teaching or suggestion of changing a program source for video in response to a user command to change channel. By doing so in accordance with Applicant's teachings, the channel change is much more rapid than that of known technology.

The undersigned, however, upon further review of the claims recognizes that this point is perhaps not as clear as it could be. Hence, the claims have been clarified so that this point is better defined and the claims are in better condition for appeal. As such, reconsideration and allowance are respectfully requested.

In addition, Applicant reiterates the arguments made previously and wishes to address several responses in section 2 of the Final Office Action:

Applicants made reference to “near real time” and “speed” of a channel change in the prior arguments to emphasize that the channel change function becomes more nearly instantaneous than in the prior art. This directly flows from the structure and function claimed and is intended to point out an advantage over the cited art. The structure claimed results in this action and need not be explicitly claimed if the structure itself distinguishes over the art – which it does. However, the result is useful in analysis of the patentability of the claims. Applicant’s remarks are therefore entirely proper, especially considering the Dumont reference does not appear to address enhancing the speed of channel changes or even channel changes themselves in any way.

The Office Action purports to address the connection between a channel change and the switching of Dumont, but Applicant continues to finds no such connection since Dumont only addresses switching program sources, but not in response to a channel change command.

The Office Action further quotes the Keller and Merck cases in support of the position that references cannot be argued individually. However, references must be discussed individually in order to ascertain the differences between each reference and the claims as required in *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1 (1966). As the Examiner is no doubt aware, the Court set out a framework for applying the statutory language of §103 in this case and stated:

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” *Id.*, at 17–18.

The undersigned knows of no way to carry out the analysis of determining the scope and content of the prior art and the differences between the prior art and the claims at issue without determining what each reference individually teaches. In the prior response, Applicant merely points out that neither the Dumont reference nor the Russo reference provides the required

teaching (i.e., that which is absent is Dumont is also absent in Russo). The undersigned further notes that immediately following the discussion of this shortcoming in Russo, Applicant clearly states “Hence the combination of Dumont with Russo and Official Notice continues to fail to meet, teach or suggest the claim feature discussed above.” The undersigned arguments are entirely proper and consistent with a correct analysis under the Graham v. Deere test called out above. Applicant has correctly pointed out that a claim element is missing in all of the cited art and must be fully and properly considered in a patentability analysis.

In conclusion, Applicant submits that all claims are in condition for allowance and files this response as a submission in an RCE to assure entry. It is submitted that *prima facie* obviousness has not been established and the claims as originally submitted and as clarified by amendment are allowable. Reconsideration and allowance of all claims are respectfully requested.

### **Concluding Remarks**

The undersigned notes that many other distinctions exist between the cited art (including the Official Notice taken) and the claims. However, in view of the clear failure of the art to make the disclosure or any suggestion thereof noted above, further discussion is believed to be unnecessary at this time. Failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner’s position or an admission of any sort.

No amendments to the claims have been for reasons of patentability, but are submitted to enhance the clarity of that which is inherent in and already claimed by the originally submitted claims.

### **Interview Request**

Applicant submits this response in the form of a submission in an RCE in an effort to avoid the necessity of appeal. The undersigned hereby formally requests the courtesy of a telephonic interview at the Examiner’s earliest convenience, should the above arguments not satisfy the Examiner as to the patentability of the claims.

In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date. However, if further matters remain to be resolved, the undersigned respectfully requests the courtesy of an interview in order to expedite prosecution of this application. The undersigned can be reached at the telephone number below.

Respectfully submitted,

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